

## **DETAILED ACTION**

### ***Allowable Subject Matter***

1. The indicated allowability of claim 18 is withdrawn in view of Lawson 6146422.

Rejections based on the reference(s) follow.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bao et al. 5800549 in view of Davison 6530926 and in further view of Lawson 6146422,
4. Bao et al. teaches a method of replacing a portion of disc of a patient, the disc having an annulus and a nucleus, comprising: advancing an annulotomy tool through an access device to the intervertebral space; forming an aperture in the annulus; advancing a disc evacuation tool through the access device and through the aperture; removing at least a portion of the nucleus through the access device to at least partially evacuate the intervertebral space; and delivering a replacement disc nucleus into the partially evacuated intervertebral space through the access device (col. 6, lines 3-18). It should be noted that Bao et al. fails to teach the access device being inserted in a first configuration having a first cross-section area at a distal portion thereof; and configuring the access device such that the distal portion thereof is enlarged from the first

configuration to a second configuration wherein the distal portion extend across at least a portion of the disc.

5. Davison teaches a method that uses a common access having a first configuration and a second configuration for enhanced viewing of a surgical site.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the access device of Davison with the method steps taught by Bao et al. to give the surgeon performing the surgery an expanded surgery site for viewing (col. 5, lines 30-37).

6. It should be further noted the Bao/Davison to teach wherein the replacement disc nucleus comprises an ellipsoidal body having a convex top side and a convex bottom side, the convex top side having a dome crest that exceeds a dome crest of the convex bottom side; and a peg extending from the bottom side of the ellipsoidal body.

7. Lawson teaches a replacement disc nucleus having an ellipsoidal body having a convex top side and a convex bottom side, the convex top side having a dome crest that exceeds a dome crest of the convex bottom side; and a peg extending from the bottom side of the ellipsoidal body (see fig. 2A). Therefore, it would have been obvious to one having ordinary skill in the art to use the replacement disc nucleus in the method of Bao/Davison to ensure a tight fit and immobile attachment of the disc to the vertebrae. (col. 2, lines 3-20).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL G. MENDOZA whose telephone number is

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(571)272-4698. The examiner can normally be reached on Mon.-Fri. 9:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571) 272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/M. G. M./  
Examiner, Art Unit 3734  
/Todd E Manahan/

Supervisory Patent Examiner, Art Unit 3731